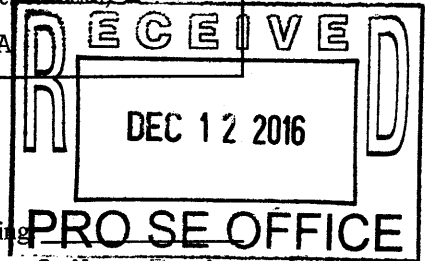


ORIGINAL

**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court		District <u>Eastern District of NY</u>
Name: <u>IRINA SHELIKHOVA</u>		Docket or Case No.: <u>10-cr-771</u>
Place of Confinement: <u>FCI Tallahassee</u>		Prisoner No.: <u>81448-053</u>
UNITED STATES OF AMERICA		Movant (include name under which convicted)
v.		<u>IRINA SHELIKHOVA</u>

MOTION



- (a) Name and location of court that entered the judgment of conviction you are challenging: United States District Court, Eastern Dist. of New York
225 Cadman Plaza East, Room 118S, Brooklyn, NY 11201-1818
- (b) Criminal docket or case number (if you know): 10-cr-771
- (a) Date of the judgment of conviction (if you know): November 22, 2013
- (b) Date of sentencing: November 12, 2013
- Length of sentence: 180 Months
- Nature of crime (all counts): Superseding Indictment: Conspiracy to commit
Health Care Fraud (Ct. 1); Conspiracy to pay Health Care Kick-
backs (Ct.2); Aiding & Abetting Health Care Fraud (Ct.3);
Money Laundering Conspiracy (Ct.4); Aiding & Abetting Money
Laundering (Cts. 5, 7, 9, 11, 13, 16)
- (a) What was your plea? (Check one)
(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to?
Pled guilty to Ct. 4 - Money Laundering Conspiracy,
in violation of 18 USC §1956(h).
- If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐
- Did you testify at either a pretrial hearing, trial or post-trial hearing? Yes ☐ No ☒

8. Did you appeal from the judgment of conviction? Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Second Circuit Court of Appeals

(b) Docket or case number (if you know): 13-4594

(c) Result: Government's motion to dismiss was granted.

(d) Date of result (if you know): May 26, 2015

(e) Citation to the case (if you know): United States v. Khandrius, et al.-613 Fed Appx 4
2015 US App. LEXIS 8846

(f) Grounds raised: _____

1.- Plea was not knowingly, intelligently, or voluntarily made;

2.- No adequate factual basis for the plea;

3.- Enhancement of losses was improperly calculated;

4.- Sophisticated means enhancement was improperly applied;

5.- Restitution was improperly ordered in excess of actual loss;

6.- Ineffective assistance of counsel.

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐

If "Yes," answer the following:

(1) Docket or case number (if you know): 15-6842

(2) Result: Denied

(3) Date of result (if you know): December 7, 2015

(4) Citation to the case (if you know): Shelikhova v. United States, 193 L. Ed. 2d 483

(5) Grounds raised: _____

1.- Whether defendant's right to effective counsel and due process was violated when government coerced a guilty plea using defendant's son as leverage?

2.- Whether the government had an undisclosed package deal resting on Defendant's guilty plea?

3.- Whether there was a Rule 11 error when defendant fails to describe the actions/elements of a criminal chargeable offense.

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information: N/A

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, application?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: _____

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: ~~Movant's counsel was so unprofessional and ineffective throughout the entire process of representing the movant that by his deceitful and coercive actions he pre-determined and strategically orchestrated the end result and therefore sealed the movant's fate and deprived her of her Fifth and Sixth Amendment rights.~~

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

***** SEE THE ATTACHED MEMORANDUM IN SUPPORT OF *****

- counsel aggressively coerced movant into signing a plea agreement.
- counsel by his actions represented another co-defendant's interest, whose fiancée paid him additional funds, creating a conflict of interest.
- neither counsel fully disclosed the terms of the package deal to the court.
- counsel for the movant spent less than 100 hours with the movant, never reviewed any discovery, or discussed any defense strategy. The MCC visitor logs can confirm that there simply was no time dedicated by counsel to consult with his client prior to her plea.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐ (in part)

(2) If you did not raise this issue in your direct appeal, explain why: _____

Ineffective assistance of counsel is generally not raised on direct appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND TWO: The conviction was obtained by plea of guilty, which was not knowingly, intelligently, or voluntarily made.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

***** SEE THE ATTACHED MEMORANDUM IN SUPPORT OF *****

- the inability to adequately communicate, because of the language barrier between an ONLY english-speaking attorney and an ONLY russian speaking client; movant's cultural background and life experiences from having been born and raised in the USSR, along with the counsel's inducement of mental anguish and his subsequent oppressive and controlling behavior invalidates the plea.

- the movant did not understand her charge or does she state any element of the charge in her counsel written allocution. In deed she was unable to explain the offense she pleaded guilty to.

- movant never saw any discovery or had any discussion regarding her case and/or any potential defense strategy.

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND THREE: Movant was denied effective assistance of counsel at her sentencing hearing.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

***** SEE THE ATTACHED MEMORANDUM IN SUPPORT OF *****

- as a result of not being familiar with the government's case and not having any consultation with the movant pertaining to any discovery, counsel was unable to conclusively challenge the government's assertions and financial loss analysis of the case.

- although counsel starts an argument challenging the losses, he is unable to present any facts or figures and even though the government concedes, the court disallows an undefined challenge without being able to provide detailed information, a specific perimeter, and proper documentation; as a result the court admonishes counsel for not having filed a proper and timely motion.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

Ineffective assistance of counsel is generally not raised on direct appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND FOUR: I: ~~Counsel abandoned client and failed to maintain the minimum standard of an attorney-client relationship when he did not discuss any defense strategy, review any records or discovery, assemble favorable evidence to sustain an objection and then intelligently argue his client's concerns.~~

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

***** SEE THE ATTACHED MEMORANDUM IN SUPPORT OF *****

- counsel raises no objection to any misstatement in the PSR or the sentencing memorandum as requested by the movant, instead he has a hysterical fit (with the translator present) and threatens to testify against movant's son.

- counsel never advised any discovery or produced any work product in movant's case.

- the record reflects both the court and the government confirming movant's assertions of prejudice by counsel's unpreparedness.

***** Additional grounds inserted behind this page - numbered page 9a *****

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

Ineffective assistance of counsel is generally not raised on direct appeal.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Ground four continued

Ground Four II: Movant had no assistance of counsel for the benefit of her defense and as such could not disprove any of the government's assertions against her.

Supporting FACTS: SEE THE ATTACHED MEMORANDUM IN SUPPORT OF *****

Counsel's actions knowingly, willingly, and voluntarily contributed to the prejudice and resulting consequences to the movant.

Ground Four III: Had Rosen fulfilled his professional duties and obligations he could have successfully argued the one issue he raised in the interest of the movant at the sentencing hearing.

Supporting FACTS: SEE THE ATTACHED MEMORANDUM IN SUPPORT OF *****

Counsel could have timely filed a motion containing the attached facts and partial evidence and presented to the court a completely different perspective of the facts of the case.

For all of the aforementioned grounds and the attached memorandum in support of this motion, outlining and detailing the facts of the movant's claims, the movant asserts ineffective assistance of counsel; but for counsel's unprofessional errors, behaviors and omissions of duties, which caused the movant to be significantly prejudiced, the outcome of the proceedings would have been very different.

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

As noted above - ineffective assistance of counsel is generally not raised on direct appeal.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Michael Rosen, 61 Broadway, Suite 2602, New York, NY 10006

(b) At arraignment and plea: Michael Rosen, as above

(c) At trial: N/A

(d) At sentencing: Michael Rosen, as above

(e) On appeal: Randolph Z. Volkell, 14 Woodland Terrace, Merrick, NY 11566

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

This petition is timely filed where the petition for writ of certiorari was denied by the
Supreme Court of the United States of America on December 7, 2015.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: _____

That this motion be granted and the Court order any and all relief to which the movant may be entitled, including but not limited to a new trial, vacating her sentence or reduced resentencing.
or any other relief to which movant may be entitled.

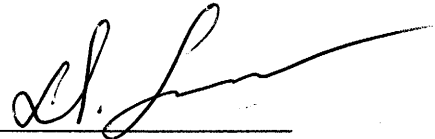
N/A

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion Under 28 U.S.C. § 2255 was placed in the prison mailing system on December 1, 2016

(month, date, year).

Executed (signed) on December 1, 2016 (date).



Signature of Movant

Irina Shelikhova - pro se
Fed. Reg. No. 81448-053
ECI Tallahassee
501 Capital Circle, Tallahassee, FL 32301

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion. N/A

